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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MICHAEL ANDRE JAMES

Petitioner,

vs.

S. SHERMAN

Respondent.

Case No. CV 14-09678-CAS
CR 04-01516-CAS

**DEFENDANT'S MOTION TO
VACATE, SET ASIDE OR
CORRECT SENTENCE PURSUANT
TO 28 U.S.C. § 2255 (Dkt. 1, filed
December 18, 2014)**

On July 24, 2008, defendant Michael A. James was sentenced to 63 months imprisonment following his conviction for possession with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B). Cr. Dkt. 63. Defendant was subsequently released to supervision. In March 2012, the United States Probation Office filed a petition for revocation of supervised release, which this Court granted on February 5, 2013. Cr. Dkt. 97. The Court sentenced defendant to 33 months of imprisonment to be served consecutive to defendant's state sentence, with no supervision to follow. Id.

On December 18, 2014, defendant filed the instant Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. Cr. Dkt. 98. In this motion,

1 defendant requests that his sentence be reduced to only 24 months on the following
2 grounds: (1) that he is now contrite and ready to accept responsibility for his actions; and
3 (2) that his mother is ill and he would like to care for her.

4 The Court finds that plaintiff has failed to identify a cognizable basis for relief
5 pursuant to 28 U.S.C. § 2255. A petition filed pursuant to section 2255 may be granted
6 only on the grounds that “the sentence was imposed in violation of the Constitution of
7 the United States, or that the Court was without jurisdiction to impose such sentence, or
8 that the sentence was in excess of the maximum authorized by law, or is otherwise
9 subject to collateral attack.” 28 U.S.C. § 2255(a). Defendant’s petition is not based on
10 any of these grounds. Accordingly, the Court cannot grant defendant the relief he has
11 requested.

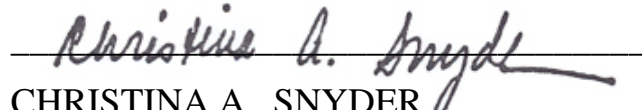
12 In addition, defendant’s petition is untimely. Section 2255 provides a “1-year
13 period of limitation” which runs from the “date on which the judgment of conviction
14 becomes final.” 28 U.S.C. § 2255(f). This limitation period “applies to ‘all motions’
15 under § 2255.” Dodd v. United States, 545 U.S. 353, 359 (2005). A defendant’s
16 conviction becomes final if he does not file a notice of appeal “within 14 days after . . .
17 the entry of either the judgment or the order being appealed.” Fed. R. App. P.
18 4(b)(1)(A). Here, the Court entered judgment revoking defendant’s supervised release
19 and sentencing him to 33 months of imprisonment on February 5, 2013. Cr. Dkt. 97.
20 This judgment became final, for purposes of section 2255, when defendant failed to file
21 a notice of appeal by February 19, 2013. Nonetheless, defendant did not file the instant
22 petition until December 18, 2014—more than one year later. Accordingly, defendant’s
23 petition is untimely.¹

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25 ¹In addition, even if the Court construed plaintiff’s petition as a petition for a
26 reduction of sentence pursuant to 18 U.S.C. § 3582(c), defendant would still not be entitled
27 to relief because he does not qualify for any of the types of relief available under that
28 section. Section 3582(c)(1)(A) does not apply because, per the explicit language of the
(continued...)

1 For the foregoing reasons, the Court **DENIES** defendant's petition for relief
2 pursuant to 28 U.S.C. § 2255.

3 IT IS SO ORDERED.

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5 Dated: July 18, 2016

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7 CHRISTINA A. SNYDER
8 United States District Judge
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18 ¹(...continued)
19 statute, a motion pursuant to section 3582(c)(1)(A) may only be heard if brought by the
20 Director of the Bureau of Prisons. Similarly, section 3582(c)(1)(B) is applicable only
21 where "expressly permitted by statute or by rule 35 of the Federal Rules of Criminal
22 Procedure." No such express authority exists in this case or applies to the grounds
23 defendant has identified in his petition. Finally, section 3582(c)(2) does not apply to a term
24 of imprisonment imposed following a violation of supervised release. See U.S.S.G. §
25 1B1.10 comment, n. 4(A) ("Only a term of imprisonment imposed as part of the original
26 sentence is authorized to be reduced under [section 3582(c)(2)]. This section does not
27 authorize a reduction in the term of imprisonment imposed upon revocation of supervised
28 release."); see also United States v. Morales, 590 F.3d 1049, 1052 (9th Cir. 2010)
("reducing a supervised release revocation sentence is inconsistent with U.S.S.G. §
1B1.10"). Accordingly, none of the grounds for relief provided for under section 3582(c)
is applicable in this case.